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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re D.W., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, **Plaintiff and Respondent,** **v.** **D.W.,** **Defendant and Appellant.**	**A123597** **(Solano County Super. Ct. No. J35747)**

Appellant D.W. was adjudged a ward under Welfare and Institutions Code section 602 after the juvenile court held a contested jurisdictional hearing and determined she had made a misdemeanor criminal threat against her mother in violation of Penal Code section 422.[1] She appeals from the judgment committing her to the custody of the probation department for placement in the New Foundations program, arguing the evidence was insufficient to prove all the necessary elements of the underlying offense. We affirm.

[1] Further statutory references are to the Penal Code unless otherwise indicated.

I. *FACTS*

Appellant was diagnosed with attention deficit hyperactivity disorder (ADHD) and bipolar mood disorder but refused to take her prescription medication. This made her prone to violence. Appellant and her mother had many arguments over the years and when appellant did not get her way she would "rage," sometimes punching holes in the walls or kicking doors. According to appellant's mother, "[Appellant] at one point didn't have a problem with assaulting me, hitting me. I went to a doctor's appointment . . . and my doctor actually called protective services because . . . I had bruises from where she had punched me in the stomach because I wouldn't give in to her and give her her way."

On appellant's 17th birthday her boyfriend gave her a dog, which her mother told her she could keep only if she attended school. After discovering appellant had skipped school one day, appellant's mother contacted a friend with whom appellant had been staying to tell her she would be getting rid of the dog. Appellant called her mother back and they argued about whether appellant had in fact attended school that day. Appellant became furious and kept screaming at her mother to, "Give me the F-ing dog back."

Appellant's mother then went to visit her sister Rhonda S. She did not answer appellant's phone calls during her drive to Rhonda's, but appellant left several voicemail messages accusing her of stealing the dog and saying she "would regret it" and "would be sorry." When appellant's mother listened to these messages, she was frightened because she knew from past experience that appellant followed through on her threats.

Meanwhile, because her mother was not answering her phone, appellant called her aunt Rhonda and demanded that she convince her mother to return the dog. When Rhonda did not give appellant the answer she wanted to hear, appellant would hang up and call again. Appellant was swearing during their conversations and, according to Rhonda, said "she wasn't negotiating, that she would kill her mother if she didn't get the dog back. That she would hurt the other animals in the house." She said that if Rhonda didn't find out where the dog was, her mother was "dead" and "that was final." Appellant hung up the phone after saying she would kill her mother.

Rhonda was very concerned about appellant's threat and called her sister to tell her about the conversation. She told her sister that appellant had said "she was no longer negotiating and she was going to kill her." Appellant had not told Rhonda to convey the threat to her mother, but her mother and aunt were very close and spoke every day.

Appellant's mother was afraid and called the police as soon as she arrived at Rhonda's house to report what had happened. During a police interview following the waiver of her *Miranda*[2] rights, appellant initially denied telling her aunt Rhonda she wanted to kill her mother but eventually acknowledged she was very angry about the dog and had told her aunt she wanted to kill her mother.

II. *DISCUSSION*

Section 422 provides, "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (See, generally, *In re George T.* (2004) 33 Cal.4th 620, 630 (*George T.*); *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.) Appellant argues that the judgment must be reversed because the People failed to prove the first two elements of section 422, namely, that she willfully uttered the threat against her mother or specifically intended for her statements to be taken as a threat. We disagree.

Our standard of review on a challenge to the sufficiency of the evidence is well-established and deferential: we examine the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible and of

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

solid value, from which a rational trier of fact could find disputed elements beyond a reasonable doubt. (*George T.*, *supra*, 33 Cal.4th at pp. 630-631.) We may not reweigh the evidence or substitute our own factual determinations for those of the trial court. (*People v. Stewart*, (2000) 77 Cal.App.4th 785, 790.) That the evidence might also be reasonably reconciled with a contrary finding is not a basis for reversal. (*George T.*, at pp. 630-631.)

Section 422 was not intended to punish emotional utterances, angry outbursts or ranting soliloquies, even when violent in nature. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) Rather, the statute targets only those persons who intentionally instill fear in others. (*Ibid*.) Appellant argues that given her history of emotional upset and behavioral problems from ADHD and bipolar disorder, her statements to her aunt about killing her mother were not "willful" within the meaning of the statute and were not intended to be taken as a credible threat.

As appellant acknowledges, a "willful" act "implies no evil intent but means the person knows what he or she is doing, intends to do it and is a free agent." (*People v. Lewis* (2004) 120 Cal.App.4th 837, 852.) The evidence readily supports the court's determination that appellant knew what she was doing when she told her aunt she would kill her mother if she did not get her dog back.

The evidence is also sufficient to show that appellant specifically intended the statement to her aunt to be taken as a threat. The words themselves were unequivocally threatening: appellant said she would kill her mother if she did not return the dog.[3] Appellant had already telephoned her mother repeatedly to scream at her and tell her that if she did not return the dog she would regret it. Against the backdrop of their previous arguments, during which appellant had sometimes assaulted her mother or destroyed property, it can be readily inferred that appellant intended to convey a serious threat.

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[3] Appellant makes no claim that the threat was too conditional to qualify under section 422 because she said she would kill her mother *if* she did not return the dog. Such an argument would fail in any event. (See *People v. Dias* (1997) 52 Cal.App.4th 46, 51-54.)

(See *People v. Butler* (2000) 85 Cal.App.4th 745, 754 [parties' history can be considered as circumstance tending to prove intent and other elements of section 422].)

We are not persuaded by appellant's comparison of her case to the circumstances considered by the court in *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*). The defendant in the *Ricky T.* case was a 16-year-old student who left his classroom to use the restroom. When the student returned, he pounded on the locked classroom door. His teacher opened the door outward and hit the student's head. Angry, the student cursed and told the teacher, "I'm going to get you" or "I'm going to kick your ass." The teacher felt physically threatened but conceded the student did not make a specific threat or engage in any other aggressive act. (*Id.* at pp. 1135, 1136, 1138.)

The *Ricky T.* court held that in context, the student's outbursts were not serious, deliberate statements of purpose. The supposed threats were ambiguous, there was no evidence a physical confrontation was imminent, and the student and teacher had no prior history of disagreements, quarrels, or hostile confrontations. (*Ricky T.*, *supra*, 87 Cal.App.4th at pp. 1137-1138.) The court concluded the student's "intemperate, rude, and insolent remarks" constituted an emotional reaction to an accident rather than a criminal threat. (*Id.* at pp. 1138, 1141.)

Unlike the defendant in *Ricky T.*, who made a one-time outburst in response to an accidental physical blow, appellant called her aunt after a protracted argument with her mother about the dog, saying she was not negotiating and would kill her mother if she did not get the dog back. Appellant's threat to kill her mother was part of an escalating situation involving her anger over losing her dog, and given her history of conflict and violence, the court reasonably concluded that she made a willful threat and specifically intended that it be taken as such.

Appellant suggests that she lacked the specific intent to threaten her mother because she made the statement about killing her mother to her aunt. We are not persuaded. Section 422 does not require that a threat be personally conveyed to the victim, but when the threat is made via a third party, it must be shown that the defendant specifically intended it to reach the victim. (*People v. Felix* (2001) 92 Cal.App.4th 905,

913; *In re David L.* (1991) 234 Cal.App.3d 1655, 1659.) In this case, appellant's aunt testified that she was close to appellant's mother and spoke with her every day. The court could infer from this that when appellant told her aunt she would kill her mother if the dog was not returned, she intended for her aunt to convey the threat to her mother.

III. *DISPOSITION*

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.